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SUBJECT: AFM HE URGES UNITED STATES TO INTERCEDE WITH COURT  
ON FALUN GONG CASE

Classified By: Charge d'Affaires David S. Sedney. Reasons 1.4 (b/d).

Summary

1. (C) China is dissatisfied with the United States Government's inaction in preventing the Federal District Court for the Southern District of New York from entering a default judgment in the Falun Gong case against China Central Television, Assistant Foreign Minister He Yafei told the Charge February 16. AFM He repeated points he has made previously on this and other cases, arguing that because CCTV is a state owned and operated organization, it enjoys sovereign immunity. The United States Government's inaction risks harm to bilateral ties and could be viewed as tacit support for Falun Gong, AFM He claimed. The Charge stressed that the CCTV case is strictly a legal matter and firmly rejected the idea that it is in any way a political issue. The core question has no relation to Falun Gong but rather is the different views we have of sovereign immunity. The Charge urged AFM He that to contest jurisdiction, China should retain local counsel. End Summary.

AFM He: The United States Should Act

2. (C) AFM He said the Chinese side has repeatedly urged the United States to take steps to have the Falun Gong case against CCTV dismissed. The Chinese side is dissatisfied that the United States has taken no action. AFM He gave three reasons the United States should act, specifically 1) CCTV is a state organization and enjoys sovereign immunity, therefore the court has no jurisdiction to consider the case, let alone enter a default judgment; 2) CCTV has extensive and close cooperation with "relevant agencies" in the United States and a default judgment could have a negative effect on those ties while harming bilateral relations overall; and 3) CCTV constitutes state property, and as result, if the court enters a default judgment, the Chinese side will be "forced to take countermeasures," which neither side wants to see.

3. (C) AFM He assessed that the United States and China have built positive momentum in our relationship through implementing the consensus reached by President Bush and President Hu. The productive February 15 phone call between the two leaders, during which they discussed the North Korea nuclear issue and Sudan, among other matters, is evidence of the stable state of ties. This year is a pivotal one for United States-China relations and we should not allow "roadblocks" such as the Falun Gong to hinder our

progress, AFM He said. The United States Government's provision to courts of legal opinions on such "unwarranted" law suits in the past has played an important role in resolving them. In addition, the United States has an interest in intervening in cases involving sovereign immunity and should take the initiative to do so in this instance, AFM He said.

It's Law, Not Politics  
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¶4. (C) The Charge rejected AFM He's linking the CCTV court case with larger political issues, underscoring that the matter is not a political decision but strictly a legal issue. The United States Government can not under our law and legal system do what the Chinese request. The core issue has nothing to do with Falun Gong. Rather, the crux of the matter relates to our two countries' different interpretations of the legal principle of sovereign immunity and how it should be applied. In our legal system, the Foreign Sovereign Immunity Act governs such matters along with the case precedents from our common law system. The United States is not singling out China. There are other countries who have different views from the United States on sovereign immunity. We tell them the same thing we tell China, that is, to get a lawyer and contest jurisdiction.

¶5. (C) The Charge rejected AFM He's contention that United States inaction in this case is tantamount to a sign of support for Falun Gong. He told the AFM that China should not take any "countermeasures." The CCTV case is a legal issue and not a political one and China should not mix the two, the Charge stressed.

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¶6. (C) The Charge reminded AFM He of the United States principle of separation of powers, underlining that the Executive Branch does not have the authority to do what the Chinese Government is asking in the CCTV case. To contest jurisdiction in the United States, foreign governments must retain counsel and appear in court to present their sovereign immunity arguments. Some special exceptions exist, for example in some cases involving heads of state. The CDA reiterated that the Executive Branch's actions in the CCTV case in no way reflect political decisions and signify no political "message."

¶7. (C) Contending that the decision not to act in this case could be perceived as official support for Falun Gong, AFM He repeated his previous points and emphasized the risks to bilateral relations. The case involves United States foreign policy interests. As such, the United States Government should take appropriate measures, AFM He said. The Charge said he "firmly rejects" the notion that there is a political element to the case, adding that our law must dictate our response. If the Chinese Government believes we are making a political decision in this case, then "the Chinese Government is wrong," the Charge said.  
SEDNEY